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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,945	07/23/2001	Dan Kikinis	P1544D1	8414

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CENTRAL COAST PATENT AGENCY  
PO BOX 187  
AROMAS, CA 95004

EXAMINER
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CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 06/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/911,945

Applicant(s)

KIKINIS, DAN

Examiner

Jason D Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Attached Office Action*.

### **DETAILED ACTION**

1. This action is responsive to the remarks of the applicant (Paper No. 4) filed on 3/19/03. Claims 1-14 are presented for examination.
2. Claims 1-7, 11 and 12 (Groups I and III) are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant's election without traverse of Group II in Paper No. 4 is acknowledged.
3. Claims 8-10, 13 and 14 are presented for further examination.

### ***Specification***

4. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.
5. Claim 9 is objected to because of the following informalities:  
  
Claim 9 is suggested to be dependent upon claim 8 (not claim 7).  
  
Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yong et al. (hereinafter Yong), U.S. Patent No. 5,541,919, in view of Woundy, U.S. Patent No 6,031,841.

8. Regarding claim 8, Yong discloses a data transmission system comprising:

a high priority queue reserved for data entities requiring that data entities be sent in a successive fashion at or above a minimum; a lower priority data entity queue [Yong, col. 3, lines 27-47 and col. 4, line 40 – col. 5, line 6]; and

control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be transmitted interspersed with data entities from the high priority queue [Yong, col. 3, lines 27-47, col. 4, line 40 – col. 5, line 6, and col. 9, line 43 – col. 10, line 15].

Yong does not specifically disclose a broadband transmission and transmitting without causing the rate of transmission of the to fall below the minimum rate. However, Woundy, in the same field of endeavor, discloses satellite broadband transmission of packets with Quality of Service (QOS) [Woundy, col. 1, lines 19-61] with a similar system as Yong. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have satellite transmissions and QOS, taught by

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Woundy, into the priority-based transmission system, taught by Yong, in order to be more global and regulating the transmission.

9. Regarding claim 9, Yong-Woundy further discloses the transmission system comprises a satellite transmission system [Yong, col. 1, lines 13-26] [Woundy, col. 1, lines 19-35].

10. Regarding claim 10, Yong-Woundy further discloses upon dividing a large data entity into multiple smaller data entities for transmission, the control routines prepare a division key for transmission to a user, the division key adapted to aid in reassembling the multiple data entities back into the undivided larger data entity [Yong, col. 5, lines 15-66 and col.9, lines 15-59] [Woundy, col. 1, lines 36-61].

11. Regarding claims 13 and 14, they are method claims that correspond to the apparatus in claims 8-10, respectively. Therefore, the similar limitations are disclosed under Yong-Woundy for the same reasons set forth in the rejection of claims 8-10 [Supra 8-10].

### ***Conclusion***

12. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thur. (9AM-6PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on (703) 305-9703.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703) 746-7238 (After Final Communications)

(703) 746-7239 (Official Communications)

(703) 746-7240 (For Status inquiries, Draft Communications)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Jason D Cardone  
Examiner  
Art Unit 2142

June 1, 2003